UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/584,113	04/04/2007	**Kristian Lund Henriksen**	BECK:001	3904

36275 7590 06/22/2009

O'KEEFE, EGAN, PETERMAN & ENDERS LLP
1101 CAPITAL OF TEXAS HIGHWAY SOUTH
#C200
AUSTIN, TX 78746

EXAMINER	
FORD, ALLISON M	

ART UNIT	PAPER NUMBER
1651	

MAIL DATE	DELIVERY MODE
06/22/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/584,113	HENRIKSEN ET AL.	
	Examiner	Art Unit	
	ALLISON M. FORD	1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *1* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-50* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-50* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Requirement for Unity of Invention

This application contains claims directed to more than one species of the generic invention. Specifically, the claims recite numerous species of 'additional active agents' which are to be included in either the first zone or the second zone (as defined by independent claim 1). The probiotic tablet containing each of the different 'additional active agents' are considered distinct species of the generic probiotic tablet recited in claim 1. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

(a) The probiotic tablet of claim 1, wherein the second zone comprises iron as the at least one active ingredient. (claim 11)

(b) The probiotic tablet of claim 1, wherein the second zone comprises vitamin B6 as the at least one active ingredient. (claim 12)

(c) The probiotic tablet of claim 1, wherein the second zone comprises vitamin C as the at least one active ingredient. (claim 13)

(d) The probiotic tablet of claim 1, wherein the second zone comprises copper as the at least one active ingredient. (claim 14)

(e) The probiotic tablet of claim 1, wherein the second zone comprises manganese as the at least one active ingredient. (claim 15)

(f) The probiotic tablet of claim 1, wherein the second zone comprises pantothenic acid as the at least one active ingredient. (claim 16)

(g) The probiotic tablet of claim 1, wherein the second zone comprises zinc as the at least one active ingredient. (claims 17 and 29)

(h) The probiotic tablet of claim 1, wherein the second zone comprises chromium as the at least one active ingredient. (claim 18)

(i) The probiotic tablet of claim 1, wherein the first zone further comprises encapsulated vitamin B1. (claim 27)

(j) The probiotic tablet of claim 1, wherein the first zone further comprises encapsulated vitamin B6. (claim 28)

(k) The probiotic tablet of claim 1, wherein the first zone further comprises encapsulated manganese. (claim 30)

(l) The probiotic tablet of claim 1, wherein the first zone further comprises encapsulated vitamin A. (claim 31)

(m) The probiotic tablet of claim 1, wherein the first zone further comprises encapsulated vitamin D. (claim 31)

(n) The probiotic tablet of claim 1, wherein the first zone further comprises encapsulated vitamin E. (claim 31)

(o) The probiotic tablet of claim 1, wherein the first zone further comprises encapsulated vitamin B12. (claim 31)

(p) The probiotic tablet of claim 1, wherein the first zone further comprises encapsulated vitamin B2. (claim 31)

(q) The probiotic tablet of claim 1, wherein the first zone further comprises iodine. (claim 49)

(r) The probiotic tablet of claim 1, wherein the first zone further comprises magnesium. (claim 49)

(s) The probiotic tablet of claim 1, wherein the first zone further comprises nicotinamide. (claim 49)

(t) The probiotic tablet of claim 1, wherein the first zone further comprises folic acid. (claim 49)

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: Each of the species of tablet formulations have distinct chemical compositions, the additional active ingredient contained within each of the species is unique to that species.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Currently claims 1 and 19 are generic.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be presented at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of right to petition under 37 CFR 1.144. If claims

are added after the election, applicant must indicate which of these claims are readable on the elected invention or species.

Should applicant traverse on the ground that the inventions have unity of invention (37 CFR 1.475(a)), applicant must provide reasons in support thereof. Applicant may submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. Where such evidence or admission is provided by applicant, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ALLISON M. FORD whose telephone number is (571)272-2936. The examiner can normally be reached on 8:00-6 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Allison M. Ford/
Primary Examiner, Art Unit 1651